IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3845 OF 1996

Bank of Maharashtra
having its head office at
Lokmangal Shivajinagar, Pune-411005 ... Petitioner

V/s.

Bank of Maharashtra Karmachari
Sangh, 185, Shaniwar Peth
Pune - 411 030 ... Respondent

Mr.A.G. Damle for Petitioner
Respondent served

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 18, 2004**

ORAL JUDGMENT:

. This Petition arises from an award of the Labour Court in Reference No.CGIT/2/33 of 1991. The respondent-Union had raised a dispute on behalf of their member S.G. Vaidya which was refereed for adjudication under section 10(1)(d) of the Industrial Disputes Act. The dispute was whether the concerned workman should be paid allowance as Head Cashier Category A, for the period from 1.4.1979 to 22.2.1988.

2. Despite service being effected on the Respondent, nobody has bothered to remain present in Court.

3. The Shastri Award and the Desai Award and various bipartite settlements govern the service conditions of employees in the banking industry. The bi-partite settlement of 19.10.1966 introduced the category of Head Cashier. Under the bipartite settlement a special allowance was payable to various categories of employees, including Cashier in charge of pay office or branch and head cashier categories A to E. According to the Respondent-Union, the workman was entitled to be paid allowance which was payable to Head Cashier category A for the period from April 1979 to 23.2.1988. It was the case of the Union that the workman was working with four other cashiers in the cash department. A demand was therefore, raised by the union on behalf of the workman regarding payment of special allowance to the head cashier category A to the concerned workman. In the statement of claim filed before the Labour Court it was pleaded that although the workman was performing the duties of the Head Cashier category A, he was not being paid the amount payable under the Awards and the bi-partite settlement applicable. According to the Union, the workman was assisted by four other clerks till he was transferred on administrative grounds w.e.f. 23.2.1988.

4. In its written statement, the bank had contended

that unless the head cashier works with five or more other clerks, he is not entitled to the allowances payable to head cashier category A. According to the bank, if the head cashier works with either four clerks or less than four clerks, he is entitled to allowances under Category B. On this basis, the bank refuted the allegations made in the statement of claim. It appears that no evidence was led before the Labour Court by either party. The bank had also raised the contention that the dispute itself could not be referred for adjudication under section 10(1) as the interpretation of the Shastri and Desai Awards as well as a bi-partite settlements were in question. This, according to the bank, could have been resolved by making a reference under section 36A of the Industrial Disputes Act for interpretation of the settlement. A further contention is raised that the reference was belated and therefore, not maintainable.

5. On a perusal of the award, I find that the Labour Court has erred in concluding that the workman concerned was entitled to allowances payable to Head Cashier Category A. These findings have been arrived at by the Labour Court in view of the fact that the workman had four other clerks working with him and he was the seniormost amongst them.

6. The bi-partite settlements provide for payment of allowances to persons holding certain posts including that of Head Cashier. Under Schedule II of that settlement, special allowances payable for clerical staff is as follows:

Schedule II-A B.P. Settlement dated 10.4.1989 - Special allowance for -

Clercal Staff	Amt.of Spl.Allow.	Amt.ranking for P.Fund
13. Cashier-in-charge of cash in pay office or branch	Rs.189/-	Rs.170/-
14. Head Cashier- Category 'A' Units of 5 clerks and above	Rs.248/-	Rs.224/-
Unit of 4 clerks and below	Rs.189/-	Rs.170/-

7. A plain reading of the above would show that the Head Cashier Category A would be entitled to a special allowance of Rs.248/- provided he has a unit of five clerks or more working with him and Rs.189/- if the unit is of four clerks or less. Therefore, in my view, the submission of Mr.Damle that the award is based on a misinterpretation of the bi-partite settlement must be accepted and the award of the Labour Court must be set aside. The unit of five clerks and above means that there must be at least five clerks working with the Head Cashier in order that the Head Cashier be paid the special allowance of Rs.248/- per month. Unless the

unit consists of five clerks besides the Head Cashier, the Head Cashier is not entitled to this allowance. The grade of Head Cashier is not and cannot be granted to a workman merely on the basis of seniority. That grade will have to be granted on the basis of the qualifications for a Head Cashier as stipulated in the Shastri and Desai Awards or bi-partite settlement. There is nothing on record to show that the workman concerned had the requisite qualifications for being appointed as Head Cashier. Therefore, in my view, the Reference could not have been answered in the affirmative. Unless a person is appointed as a Head Cashier, he will not be entitled to any allowances payable to the Head Cashier. Admittedly, the workman was not appointed as a Head Cashier. He was merely the seniormost amongst five clerks. This would not necessarily lead to the conclusion that he automatically was entitled to the grade of Head Cashier Category A.

8. In the result, Rule made absolute. No order as to costs. Writ Petition is disposed of accordingly.